IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/07/2003

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.244 of 2002

Pasuvaraj .. Appellant

-Vs-

State rep. by
Inspector of Police
Ooty B1 Police Station
(Cr.No.2/99) .. Respondent

This criminal appeal is preferred against the judgment of the learned Sessions Judge, Nilgiris, Ooty, in S.C.No.9 of 2000 dated 1.9.2001.

!For Appellant : Mrs. Jayasri Baskar

^For Respondent : Mr.V.Jaya Prakash Narayanan
Government Advocate (Crl. Side)

:JUDGMENT
This is an appeal by the sole accused in a case of murder, wherein he was found guilty though not under S.302 of I.P.C., but under S.304(ii) of I.P.C. and sentenced to undergo 10 years R.I.
2. The short facts, which led the trial Court to frame the said charge against the appellant/accused are as follows:
(a) The appellant/accused was working as cook-cum-server at Tasty Kabab Corner, a Hotel, situated at Serincross, Ooty. On 1.1.1999 at about 00.30 hours, P.W.1 Shanmugasundaram along with the deceased Krishnamurthy, who is the brother of P.W.1, came to the hotel for taking his dinner. Since, there was some delay, the deceased questioned the hotel owner, which resulted in a quarrel between them. At that time, the accused Pasuvaraj intervened and told the deceased that "if you want the food, wait here and take it, otherwise get away". Immediately, the deceased slapped on the cheek of the accused. P.W.1 made his attempt to pacify them. Enraged over this, the accused gone into his room, took M.O.1 billhook, came out and attacked the deceased on the left neck and caused a severe injury to the deceased and fled away from the occurrence place. P.W.1, P.W.3 Ravikumar and P.W.4 Aravindakumar who witnessed the occurrence, chased the accused, but, they could not apprehend him. In the meantime, P.W.2 Sivaraman, an auto driver, took the deceased in his auto to the Government Hospital, Ooty, where P.W.6 Dr.Karthikeyan, who was on duty, examined the deceased. P.W.6 recorded the statement given by the deceased which is marked as Ex.P6. He gave Ex.P5 intimation to the Police

Station at Ooty, and on receipt of the information, P.W.10 Thimeni, Sub Inspector of Police came to the Government Hospital, Ooty and recorded a statement from P.W.1, marked as Ex.P7. On the strength of Ex.P7, he registered a case in Crime No.2 of 1999 under S.307 of I.P.C. at about 1.15 A.M. on 1.1.99. Ex.P16 printed F.I.R. was despatched to the concerned Judicial Magistrate's Court, Ooty. P.W.11 Nandakumar, Inspector of Police, on receipt of the copy of the F.I.R. took up the investigation, proceeded to the Government Hospital, Ooty, examined P.W.1, recorded his statement and recovered M.Os.2 to 4 clothes worn by the deceased under Ex.P2 mahazar in front of the witnesses. The injured died at 2.45 A.M. P.W.11 got Ex.P7 death intimation, altered the case to one under S.302 of I.P.C. and prepared the express alteration report marked as Ex.P17 which was sent to the concerned Magistrate's Court. He proceeded to the Government Hospital, Ooty, conducted inquest on the body of the deceased in the presence of panchayatars and other witnesses and prepared Ex.P16 inquest report.

(b) On requisition received from the Investigation Officer, P.W.7 Dr.A.Karthikeyan conducted the postmortem on the dead body of Krishnamurthy. The Doctor found the following injuries.

External Injuries:

1. A sutured wound 6 cms. in length horizontally placed over left side of neck. 3 cms below the chin, starts 3 cms lateral to trachea and extends to nape of neck.

Internal Injuries:

1. Injury in 6 cms in length and 3 cms in depth, margins regular incised wound.
2. Skin and plastisma cut in the incisional line.
3. Cut of external jugular vein in the incisional line.
4. Left ribbon muscles cut in the incisional line.
5. Medial side of left sternomastoid muscle cut in the same incisional line.
6. Heart chambers right artium and ventricle contain frothy blood due to air ombolism.
7. Left artium and ventricles empty.

The Doctor has issued Ex.P9 postmortem certificate and has opined that the deceased would appear to have died of Hypovalemic shock due to the injuries sustained and haemorrhage caused to the vital organs.

(c) The Investigation Officer proceeded to the site of occurrence, inspected the same and prepared Ex.P19 observation mahazar and Exs.P20 and P21 rough sketch. He seized M.Os.10 and 11 under Ex.P22 mahazar in front of the witnesses. The Investigation Officer examined P.Ws.9 and 10 and one Premkumar and recorded their statements. On 2.1.99, the accused voluntarily surrendered before P.W.11 and gave a confessional statement which was recorded in front of P.W.5 Sadanandham and other witness namely Ragunath. The admissible portion of the confessional statement is marked as Ex.P3. Pursuant to the confessional statement, the appellant/accused produced M.O.1 billhook and M.O.3 shirt which was worn by him at the time of the occurrence. Both the material objects were recovered under Ex.P4 mahazar in front of the witnesses. The accused was remanded to judicial custody. On 3.1.99, the Investigation Officer examined P.Ws.4, 6 and 7 and recorded their statements. A requisition was forwarded to the Judicial Magistrate, Udhagamandalam under Ex.P10 for sending the material objects for chemical analysis. Accordingly, they were sent and Ex.P12 analyst's report and Exs.P13 and P14 serologist's reports were

received, according to P.W.8 Nageswaran, Head Clerk of the concerned Magistrate's Court. On completion of the investigation, P.W.11 filed a charge sheet against the accused.

3. In order to prove the charge levelled against the appellant/ accused, the prosecution examined 11 witnesses and marked 22 exhibits and 11 material objects. After completion of the evidence of the prosecution, the accused was questioned under S.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused made a statement stating that he was actually standing inside the hotel at the time of occurrence; that he was called by the deceased; that a scuffle was going on outside; and that he opened the door and went outside and found the deceased with stab injuries on his neck. He flatly denied the prosecution case. No defence witness was examined. After consideration of the rival submissions and scrutiny of the available materials, the trial Court found the appellant/accused guilty under S.304(ii) of I.P.C., convicted and sentenced him as stated above.

4. Advancing his arguments for the appellant, the learned Counsel made the following submissions:

The trial Court has thoroughly disbelieved the evidence of P.Ws.1, 3 and 4, who according to the prosecution were the eyewitnesses, and thus, it would be clear that though there were number of persons present at the time of the occurrence, no one has spoken about the fact of the occurrence. Hence, the prosecution case should have been rejected. P.W.2 who was the auto driver and who took the injured to the hospital, has not spoken anything about the involvement of the accused in the case. The lower Court has much relied on the recovery of M.O.1 from the accused to form basis for conviction, which would not be sufficient to sustain a conviction in the eye of law. The injured at the time of admission in the hospital has informed to the Doctor that he was attacked by a known person with a knife. But, according to the prosecution, the weapon that was used by the appellant/accused at the time of occurrence was an aruval. Apart from that, it is highly doubtful whether the deceased was conscious at the time when he made a statement before the Doctor. Even assuming that he was conscious and has stated that a known person attacked him, the occurrence, according to the prosecution, has taken place at Tasty Kabab Corner, a Hotel, where number of persons known to him, would have been present, and hence, it could not be inferred that it was the accused who committed the crime. For all these reasons, the lower Court should have outright rejected the prosecution case, and the appellant/accused is entitled for an acquittal in the hands of the Court.

5. Opposing strongly all the contentions put forth by the appellant's side, the learned Government Advocate (Criminal Side) would submit that at the earliest, the injured was taken to the hospital and has made a statement to P.W.6 Doctor who was on duty, and the Doctor has also recorded a statement given by him, wherein it has been categorically stated that he was attacked by a known person with a knife at the said hotel; that P.W.5 is the independent witness, who has been examined by the prosecution to speak about the arrest and the confessional statement of the appellant/accused, pursuant to which the weapon of murder has been seized; that all the material objects recovered were subjected to chemical analysis, and the reports have also been filed; that the serologist's report would indicate that the blood group was found to be the

same; that P.W.7 Postmortem Doctor has opined that the injury could have been caused in such a way, in which the prosecution put forth its case; that the deceased was attacked by aruval at the time of occurrence on his left neck; that the prosecution has proved the case beyond reasonable doubt by adducing clear evidence, and hence the conviction and sentence imposed on the appellant/accused have got to be sustained.

6. This Court paid its full attention on the rival submissions and made a close scrutiny of the materials available, which led the Court to give its considered view that there is no substance in the appeal.

7. As seen above, P.W.1 accompanied by the deceased went to the Hotel namely Tasty Kabab Corner on 1.1.99 at about 00.30 hours. It is not in dispute that the accused was working as a server in that hotel that time. There was a wordy quarrel due to the delay in service, which made the deceased to give a slap on the cheek of the accused. The accused, who could not tolerate the same, took an aruval and attacked the deceased on the left side of his neck. It is true that the lower Court has thoroughly disbelieved the evidence adduced by the prosecution through P.Ws.1, 3 and 4, who were the eyewitnesses to the occurrence. But, the prosecution has proved the case by the other evidence available. Immediately after the occurrence, the injured was taken to Government Hospital, Ooty by P.W.2, who has spoken about the said fact. P.W.6 was the Doctor on duty that time. He admitted the injured Krishnamurthy who gave a statement stating that he was attacked by a known person with a knife. P.W.6 who recorded the said statement has also spoken to the fact that the injured was conscious that time, and it was the statement made by him. This part of the evidence would clearly reveal that the occurrence has taken place at the time and place, and a known person attacked the deceased with aruval on the left side of his neck. Immediately on the intimation from P.W.6, P. W.10 rushed to the hospital, recorded a statement from P.W.1 and registered a case under S.307 of I.P.C. The injured due to the injuries sustained by him succumbed to death by 2.45 A.M. Then the case was altered to one under S.302 of I.P.C., and express altered F.I.R. was despatched to the concerned Magistrate's Court without any delay whatsoever. After the case was altered to S.302 IPC, P.W.11 Inspector of Police took up the investigation and completed the same procedurally. P.W.11 recorded the statement of P.W.1. He went to the place of occurrence, proceeded to the hospital, conducted the inquest, prepared a report and gave a requisition to P.W.7 Doctor, pursuant to which the Doctor conducted the autopsy. P.W.7 has also given a report under Ex.P9 opining that the deceased would have died of Hypovalemic shock due to the injuries sustained and haemorrhage caused to the vital organs. Therefore, the death has occasioned to the deceased only due to the injury that was caused at the time and place of the occurrence, as alleged by the prosecution.

8. Now the factum of identity of the appellant has been clearly brought forth by the evidence adduced by the prosecution that it was only the appellant who was involved therein. Immediately on arrest, the accused has given a confessional statement to P.W.11 Investigation Officer, who recorded the same in the presence of the witnesses. The admissible portion of the said confessional statement has been marked as Ex.P3. Pursuant to the confessional statement, the appellant/ accused has produced M.O.1 along with his clothes, which he was wearing at the time of occurrence. M.O.1 billhook and M.O.3 shirt, which the accused was wearing at the time of occurrence, were seized

under a mahazar in front of the two witnesses including P.W.5. P.W.5 has spoken about all the above facts namely the arrest, the confessional statement, which was volunteered by the accused and the seizure of M.Os.1 and 3 pursuant to the confession. The evidence of P.W.5, an independent witness, is in tact, despite the cross examination. There is no reason or circumstance which was brought to the notice of the Court to disbelieve or suspect the evidence of P.W.5. This part of the evidence adduced by the prosecution that M.O.1 billhook used by the assailant at the time of occurrence was seized on the confessional statement made by him could be considered as a clinching proof or nexus between the accused and the crime in question. One added strong circumstance is that all the material objects recovered at the time of investigation were subject to chemical analysis, and reports have been received. Ex.P13 is the Chemical Analyst's report, wherefrom it can be found that the M.O.1 billhook which was recovered from the accused pursuant to his confession and M.O.3 shirt worn by him at the time of the occurrence contained the same blood group. Thus, the scientific evidence is also in support of the prosecution case, and therefore, it has to be held that the prosecution has proved the nexus between the accused and the crime clearly by the evidence as narrated above.

9. In view of the aforesaid reasons, all or any one of the contentions put forth by the appellant's side do not carry any merit. The lower Court was perfectly correct in coming to the conclusion that it was the appellant/accused who caused the death of the said Krishnamurthy at the place and time as alleged by the prosecution. Coming to the question of sentence, the lower Court has found him guilty under S.3 04(ii) I.P.C. since the charge of murder has not been proved, but the appellant has attacked the deceased with the billhook due to sudden provocation, and this would attract S.304(ii) I.P.C. Therefore, the conviction passed by the lower Court has got to be confirmed. However, the lower Court has awarded a punishment of 10 years R.I., which in the facts and circumstances of the case is excessive. the Court is of the view that it is a fit case where the punishment awarded to the appellant/accused has got to be reduced to 5 years R.I., which would meet the ends of justice.

10. In the result, the sentence of 10 years R.I. imposed by the lower Court on the appellant/accused under S.304(ii) of I.P.C. is modified, and the appellant/accused shall undergo R.I. for 5 years. In other respects, the judgment of the lower Court is confirmed. With the above modification, this criminal appeal is dismissed.

Index: Yes
Internet: Yes

To:
1) The Judicial Magistrate, Udhagamandalam.
2) The Judicial Magistrate, Udhagamandalam,
Thro' The Chief Judicial Magistrate, Udhagamandalam,
Nilgiris.
3) The Sessions Judge, Nilgiris at Udhagamandalam.
4) The Principal Sessions Judge, Udhagamandalam, Nilgiris.
5) The Superintendent, Central Prison, Coimbatore.
6) The Public Prosecutor, High Court, Madras.

7) The D.I.G. of Police, Chennai 4.
8) Mr.V.Jaya Prakash Narayanan, Government Advocate
(Crl. Side), High Court, Madras.
9) The Inspector of Police, Ooty B1 Police Station.

nsv/